

APPEAL NO. 041462
FILED AUGUST 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 27, 2004. With respect to the issues before him, the hearing officer determined that the respondent (claimant) reached maximum medical improvement (MMI) on November 17, 2003, with an impairment rating (IR) of five percent in accordance with the certification of a doctor to whom he was referred by his treating doctor for an MMI and IR examination. In its appeal, the appellant (carrier) argues that the hearing officer erred in not giving presumptive weight to the designated doctor's certification by adopting her November 3, 2003, MMI date and zero percent IR. The appeal file does not contain a response to the carrier's appeal from the claimant.

DECISION

Affirmed.

The hearing officer did not err in not giving presumptive weight to the designated doctor's report in this instance. As the hearing officer noted, this is not merely an instance where the designated doctor and the referral doctor had a difference of opinion as to which Lumbosacral Diagnosis-Related Estimate (DRE) category the claimant was properly placed. Rather, this is a circumstance where the designated doctor determined that the claimant did not have significant clinical findings and, therefore, placed the claimant in Lumbosacral DRE Category I for complaints and symptoms. However, the records from the claimant's treating doctors and the lumbar MRI reveal that the claimant had lumbar disc pathology as a result of his compensable injury. In addition, the records reveal that the claimant has a documented history of muscle spasms or guarding, unverifiable radicular complaints, and nonuniform loss of range of motion. Based upon those findings, the hearing officer determined that "[t]he great weight of the medical evidence supports a finding that Claimant did have permanent impairment from the compensable injury, and that the correct DRE Category is II." Nothing in our review of the record reveals that the hearing officer erred in making that determination. As such, the hearing officer properly determined that the designated doctor's report was contrary to the great weight of the other evidence and was, therefore, not entitled to presumptive weight. Having determined that the designated doctor's report was not entitled to presumptive weight, the hearing officer properly adopted the report of the referral doctor and determined that the claimant reached MMI on November 17, 2003, with a five percent IR in accordance with that report. Section 408.125(c).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **FIDELITY & GUARANTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Daniel R. Barry
Appeals Judge